

**PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA,
THIRUVANANTHAPURAM.**

PRESENT : SUMAN BILLA, I.A.S.

Sub: KVAT Act, 2003 - Clarification U/s 94 - Rate of tax of Homeopathic Globules - Orders Issued.

Read: Application from M/s. Trust Pharmaceuticals, Kochi dated 10/3/2010.

ORDER No.C3/9715/10/CT DATED 15/11/2010.

1. M/s. Trust Pharmaceuticals, Kochi has preferred an application under Section 94 of the Kerala Value Added Tax Act 2003, seeking clarification on the rate of tax of the commodity 'Homeopathic Globules'.

2. The authorized representative of the applicant was heard by the Authority for Clarification on 25/5/2010. Since the members of the Authority for Clarification could not arrive at a unanimous decision, the matter was referred to the Commissioner of Commercial Taxes as envisaged in sub-section 6 of Section 94 of the Kerala Value Added Tax Act, 2003.

3. The gist of the contentions raised by the applicant are as follows.

4. The applicant has a homeo medicine manufacturing unit where the commodity GLOBULE is manufactured. The applicant would assail before the Clarification Authority that the commodity is "sugar in spherical shape"

5. The applicant has detailed the manufacturing process of the commodity as follows:

Quality sugar is powdered in a pulveriser to almost 200 micron size. Small sugar pellets of uniform size are first coated with sugar syrup made from the same quality sugar first obtained. The sugar syrup coated sugar pellets are put into a tablet coating pan in a 1cm thick layer. Over this finely powdered sugar is smeared. Above this a further layer of wetted sugar pellets are spread in 1cm thickness. Thus four to five layers of wetted sugar pellets and dry sugar powder are arranged. Then the entire thing is mixed manually first for uniform spreading. The tablet coating pan is switched on to revolve round at about 25-30 rotations per minute, continuously for the period till the small cubes attain the round shape. These pellets are taken out and dried in a drying oven at 60-70° Celsius for 2-3 hours. The dried pellets are again wetted with sugar syrup and dry sugar powder in the coating pan as described earlier and again dried in the oven. After every coating the size of the pellet increases, shape matures into globules of perfect round size. They are sieved in different meshes to separate sizes. Smaller sizes are coated again to make bigger sizes as desired.

6. The applicant would further contend that there is change in physical shape only and that the impugned product is 'sugar in spherical shape'. The applicant further contends that the name GLOBULE (Sugar ball for Homoeo Medical purpose) is used in Medical Terms. No preservatives or colours are added. The applicant has requested to clarify the rate of tax of the commodity. The contentions raised were examined as follows.

7. Homeopathic Globules which is otherwise known as 'sugar of milk' is classifiable under Chapter 17 of the Customs Tariff Act. 'Sugar Globule' as such is not specifically

mentioned in the Central Excise & Customs Tariff Acts. Sugar and sugar confectionary are classifiable under Chapter 17 of the First Schedule of the Central Excise Tariff Act, 1985. The description of Entry 1701 is as under:

CANE OR BEET SUGAR AND CHEMICALLY PURE SUCROSE, IN SOLID FORM - Raw sugar not containing added flavouring or colouring matter .

It is clear from the Tariff narration that ‘Sugar Globule’ is squarely covered under the above Tariff classification.

8. Appendix - IX B of the Prevention of Food Adulteration Act prescribes the definition of standards and quantity. Serial No.A.07.01 deals with ‘plantation white sugar’ (commonly known as sugar) which means the crystallized product obtained from sugar cane or sugar beet. It shall be free from dirt, filth, iron fillings and added colouring matter. Extraneous matter shall not exceed 0.1 per cent by weight. It shall also conform to the following standards namely:

a	Moisture (when heated at 105 Degree + Degree C for 3 hours)	Not more than 0.5 percent by weight
b	Sucrose	Not less than 98 percent by weight
	Sulphur di oxide shall not exceed 70 parts per million	

9. The decision of the Central Excise Tribunal reported in **2000(119)ELT 448 (Tribunal) in the case of German Homeopathic Distributors (P) Ltd. Vs. Commissioner of Central Excise, Mumbai** would clearly point out that ‘sugar of milk’ being ‘lactose’ is classifiable under sub-heading 1702.10 of the Customs Tariff Act. In this judgment, Tribunal has relied on the decision of the same parties reported in **1996 (85) ELT 329 (Tribunal)**. These decisions were challenged in appeal before the Hon’ble Supreme Court and dismissed as withdrawn [2003 (158) ELT 559 (Supreme Court)]. Added to this, Hon’ble High Court of Punjab and Haryana in its decision in GSTR No. 48 of 2005 in the case of State of Haryana Vs M/s Swiss Laboratories, Karnal, held that there cannot be any doubt that ‘sugar globules’ have to be regarded as ‘sugar’ within the meaning of Entry 39 of Schedule B of the Haryana General Sales Tax Act, 1973. The Hon’ble Court, following the judgments, rendered in the case of State of Gujarat Vs Sakarwala Brothers [1967] 19 STC 24; Commissioner of Sales Tax, Delhi Vs Nangumal Ram Kishore [1981] 48 STC 277; Paro & Company Vs State of Andhra Pradesh [1970] 25 STC 34 and Chunhi Lal Moti Lal Vs Commissioner of Sales Tax, Madhya Pradesh 35 STC 198 held that ‘sugar globules’ fully answer the test laid down by the Hon’ble Supreme Court in Sakarwala Brothers case. The Court further held that **the definition of ‘sugar’ is only illustrative and not exhaustive. In that context also, it has to be held that ‘sugar globule’ would meet the characteristic of ‘sugar’.** The above judgment though delivered on a comparable product made of ‘lactose’, the rationale of the judgment is squarely applicable to the present case which deals with ‘Homeopathic Globule’ made up of ‘sucrose’. The Tribunal have found that the ‘sugar of milk’ made up of ‘lactose’ cannot be classified as a homeopathic medicine under Central Tariff Heading Number 30.04, but it would be correctly classifiable under Heading 1702 of the Central Excise Tariff which deals with ‘lactose’ in pure form.

10. Even though the 'globule' is made for the purpose of dispensing homeopathic medicine, it is clear that there is only a change in its physical structure and none regards its composition. In view of the said facts and the legal position stated above, the commodity 'Homeopathic Globule' made of 'Sucrose' would fall under HSN Code 1701.11 which falls under Entry 49, subentry (i) of the First Schedule to the Kerala Value Added Tax Act, 2003 and hence exempt.

The issues raised above are clarified accordingly.

COMMISSIONER